

1 JAMES R. MCGUIRE (CA SBN 189275)
2 JMcGuire@mofo.com
3 ANGELA E. KLEINE (CA SBN 255643)
4 AKleine@mofo.com
5 MORRISON & FOERSTER LLP
6 425 Market Street
7 San Francisco, California 94105-2482
8 Telephone: 415.268.7000
9 Facsimile: 415.268.7522

10 Attorneys for Defendant
11 U.S. Bank National Association

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Indiezone, Inc., a Delaware corporation, and
EoBuy, Limited an Irish private limited
company,

Plaintiffs,
vs.

Todd Rooke, Joe Rogness, Phil Hazel, Sam
Ashkar, Holly Oliver and U.S. Bank,
collectively the ***RICO Defendants***;

Jingit LLC., Jingit Holdings LLC., Jingit
Financial, Services LLC., Music.Me, LLC.,
Tony Abena, John E. Fleming, Dan Frawley,
Dave Moorehouse II, Chris Ohlsen, Justin
James, Shannon Davis, Chris Karls in their
capacities as officers, agents and/or employees
of the Jingit LLC.,
***Defendants in Negligence, and Aiding/
Abetting;***

Wal-Mart, General Electric, Target, DOE(s)
and ROE(s) 1 through 10, ***Defendants in
Negligence Secondary-Vicarious
Infringement,***

Defendants.

Case No. 4:13-cv-04280-YGR

**REPLY IN SUPPORT OF DEFENDANT
U.S. BANK NATIONAL ASSOCIATION'S
MOTION TO (1) DISMISS PLAINTIFF
EOBUY, LIMITED AND (2) STAY ALL
REMAINING PROCEEDINGS**

Hon. Yvonne Gonzalez Rogers

Date: March 25, 2014
Time: 2:00 p.m.
Place: Courtroom 5

REPLY IN SUPPORT OF MOTION TO DISMISS

U.S. Bank National Association (“U.S. Bank”) submits this reply in support of its Motion to Dismiss plaintiff eoBuy, Limited and to stay the remaining claims against U.S. Bank (ECF No. 35).

U.S. Bank hereby joins, and incorporates by this reference as if fully set forth herein, the reply of (1) defendants Jingit, LLC, Jingit Holdings, LLC, Jingit Financial Services, LLC, Sam Ashkar, Phil Hazel, Holly Oliver, Shannon Davis, Justin James, Chris Ohlsen, Dan Frawley, Dave Moorehouse II, Tony Abena, Chris Karls, John E. Fleming, and Music.Me, LLC (“Stay Defendants”) and of Todd Rooke and Joe Rogness (collectively, the “Jingit Defendants”) in support of their motion to dismiss eoBuy, Limited and (2) the motion of the Stay Defendants to stay the remaining claims against the defendants in this action, including U.S. Bank National Association, pending the outcome of the arbitration against Messrs. Rooke and Rogness (ECF Nos. 60, 62).

As discussed in the Jingit Defendants' reply brief (ECF No. 60 at 3), plaintiffs have effectively conceded that eoBuy, Limited should be dismissed (ECF No. 54 at 9, ECF No. 54-1 ¶ 1); and the entity that plaintiffs wish to substitute for eoBuy Limited does not exist (ECF No. 60 at 3-4; ECF No. 61).

U.S. Bank further notes that plaintiffs' opposition brief (ECF No. 54) confirms that plaintiffs' only claim against U.S. Bank is based entirely on the underlying, arbitrable claim against Messrs. Rooke and Rogness. Specifically, plaintiffs claim that the Bank's alleged agreement with Jingit for "processing the AdEngine financial exchange-cash rewards" is a violation of RICO, because U.S. Bank "after the fact knew, and became aware of Plaintiffs' claims for the reason that they had been informed by Plaintiff's that its IP was being infringed." (Compl. ¶ 190; *see also*, e.g., *id.* ¶ 35 (alleging that U.S. Bank is "participating in the illegal affairs Jingit Enterprise in the misappropriation-infringement and illegal use of Plaintiffs' IP")); *id.* ¶¶ 17, 52, 57, 187-243; ECF No. 57 Ex. A at ¶ 35, 287-203 (proposed amended complaint, asserting same claims against U.S. Bank).) These claims against Messrs. Rooke and Rogness, purportedly for over \$20 billion in damages, are subject to their arbitration agreement with

1 Indiezone. (See ECF No. 29 at 1-2, 9-10 (Jingit Defendants' Memorandum); ECF No. 54 at 16
2 (Opposition, arguing that plaintiffs' claims for "injunctive relief" are not arbitrable).) In the
3 Opposition, plaintiffs do not mention U.S. Bank or otherwise attempt to explain why the claims
4 against it should not be stayed pending the arbitration (see ECF No. 54 at 17). It would be a
5 waste of Court and party resources and risk inconsistent findings to try plaintiffs' claims against
6 U.S. Bank and the other purported "RICO Defendants" while the parties at the center of this
7 action separately arbitrate the underlying claims on which plaintiffs' entire complaint is based.
8 Defendants' motions to stay should be granted.

9

10 Dated: March 3, 2014

MORRISON & FOERSTER LLP

11

12 By: /s/ James R. McGuire
James R. McGuire

13

14 Attorneys for Defendant
U.S. Bank National Association

15

16

17

18

19

20

21

22

23

24

25

26

27

3387552